Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Advanced Television Systems	)	
and Their Impact Upon the	)	MM Docket No. 87-268
Existing Television Broadcast	)	
Service	)	

TO: The Commission

RESPONSE OF SULLIVAN BROADCASTING COMPANY, INC. TO EX PARTE FILINGS OF THE ASSOCIATION OF MAXIMUM SERVICE TELEVISION, INC. AND THE ASSOCIATION OF LOCAL TELEVISION STATIONS

Sullivan Broadcasting Company, Inc. ("Sullivan"), by its attorneys, pursuant to the Commission's Public Notice of December 2, 1997, hereby submits its comments to the ex parte comments of the Association of Maximum Service Television, Inc. ("MSTV") and the Association of Local Television Stations ("ALTV") in the above-captioned proceeding.

Ex Parte Comments of ALTV. Sullivan is not taking this opportunity to re-argue the merits of the Commission's decision that creates the great power disparity between VHF-UHF and UHF-UHF stations. The golden opportunity to create market parity was not pursued. Instead, the Commission chose replication -- status quo -- preservation of the inequity visited upon UHF stations since their inception. As the Commission is aware, however, in the digital world this inequity works an additional hardship. Under the Commission's plan, some DTV stations with 50 kW of power will be competing with stations transmitting with 1000 kW. Beyond the City Grade contour, viewers of the 50 kW stations will need amplified roof antennas. Even within its City Grade contour, a 50 kW station may have difficulty penetrating building walls to adequately serve apartments. Viewers using simple loop antennas in such an

environment will, in most cases, receive no signal at all. Meanwhile the VHF-UHF DTV stations granted the power needed to replicate the coverage of their VHF parents will be easily viewable.

Sullivan's stations are hard hit by the DTV power disparity. In Buffalo, New York, Sullivan's Fox affiliate, WUTV (NTSC Ch. 29), was allotted DTV Channel 14 with a mere 50 kW of power. It will compete against NBC affiliate WGRZ-TV (NTSC Ch.2) on DTV Channel 33 transmitting at 1000 kW; CBS affiliate WIVB-TV (NTSC Ch.4) on DTV Channel 39 transmitting at 1000 kW; and ABC affiliate WKBW-TV (NTSC Ch. 7) on DTV Channel 38 transmitting at 227.9 kW. By perpetuating the old VHF-UHF inequality in the new DTV environment, the Commission has given the three major networks a tremendous competitive advantage.

The situation is just as bad in Rochester, New York. There, the Sullivan Fox affiliate, WUHF (NTSC Ch. 31), was allotted DTV Channel 28 at 50 kW. It will compete with the three major network stations WROC-TV (NTSC Ch. 8) on DTV Channel 45; WHEC-TV (NTSC Ch. 10) on DTV Channel 58; and WOKR (NTSC Ch. 13) on DTV Channel 59, all transmitting at 1000 kW!

In Utica, N.Y., Sullivan's WFXV (NTSC Ch. 33) on DTV Channel 27 at 50 kW will be up against WKTV (NTSC Ch.2) DTV Channel 29 at 522.7 kW. In Dayton, Ohio, Sullivan's WRGT (NTSC 45) DTV Channel 39 at 153.2 kW will compete against WDTN (NTSC Ch.2) DTV Channel 50 at 1000 kW and WHIO-TV (NTSC Ch. 7) DTV Channel 41 at 472.1 kW. Similarly, in Nashville, Tennessee, Sullivan's WZTV (NTSC Ch. 17) on DTV Channel 15 at 116.6 kW will have to match coverage with two market network DTV stations, WKRN-TV and

WTVF, operating at 1000 kW and 896 kW, respectively. And Sullivan's WRLH-TV, Richmond, Virginia at 64 kW will be confronted by DTV stations of WTVR-TV and WWBT, each at 1000 kW. In Charleston, South Carolina, Sullivan's WTAT-TV at 315 kW will compete with three 1000 kW DTV network affiliates!

Sullivan is not at more of a disadvantage than other UHF group broadcasters. Its situation is representative of the pervasive disparity that will be suffered by UHF-UHF DTV stations, unless the Commission acts to grant relief. For this reason, Sullivan supports the ALTV proposal and urges the Commission to adopt it.

ALTV has proposed a sensible and much needed procedure by which television stations with UHF-UHF DTV allocations will be able to achieve some competitive parity with their VHF-UHF neighbors. ALTV would rely heavily on a station's use of tilt beam antennas to be able to provide coverage at increased power without causing more interference than if the station had been operating at the power assigned in the FCC's DTV Table of Allotments. Based on experience, this technique would appear to be a useful option in many circumstances but not in all. For this reason, Sullivan supports the ALTV proposal as one mechanism that might prove useful to redressing the UHF power imbalance.[1]

In its Supplement to Petition for Reconsideration, filed in August, Sullivan noted that using directional antennas to shape signals was a method that might prove useful to some of its own stations, enabling them to increase power, at least in certain directions. In both cases, the

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[1] Sullivan is a co-signatory to the Joint Response to Ex Parte submissions of MSTV and ALTV filed this day by Viacom, Inc., proposing to increase the power of every UHF station to at least 200 kW.

constraint that no additional interference be caused can be a severely limiting factor. Thus, Sullivan also urged that the Commission adopt a *de minimis* standard that would permit power increases sufficient to assure service within a station's core area. If a *de minimis* standard is coupled with beam tilting and signal shaping, Sullivan believes the Commission will have taken a significant step toward correcting the UHF power disparity problem.

A *de minimis* standard would be particularly beneficial in reducing Commission workload. ALTV suggests a process for gaining Commission approval of power increases using tilt beam antennas that will necessitate notice to other stations, and the submission of engineering analyses to the Commission. Complaints of interference would be resolved, in the first instance, by an Engineering Arbitrator and, ultimately, by the Commission. The rigid application of a "no additional interference" policy will only lead to an increase in the number of complaints and a greater burden on stations and the Commission's staff. The ALTV proposal could solve many problems. It would be even more useful if the Commission inject a degree of flexibility into its interference policy and adopt a *de minimis* standard.

Ex parte comments of MSTV. MSTV's comments are intended to address two issues: DTV - DTV adjacent channel interference (the extent of which became known only late last summer) and the coverage and interference concerns in congested areas, or as MSTV calls them, "Acute Problem" areas. The Commission, of course, was well aware of the difficulties in congested areas and, in fact, participated in the investigation of the issue that was performed by the Advanced Televising Technology Center. On October 28, 1997, at MSTV's "Digital Television Update," Bruce Franca, Deputy Chief of the Office of Engineering and Technology, addressed the adjacent channel issue and noted that in its reconsideration of the Fifth Report and

Order, the Commission intended to make specific changes to its DTV Allotment table or recommend engineering techniques that would ameliorate the problem.

Meanwhile, all during the summer, stations across the country had been busy evaluating the Commission's Allotment table, obtaining reports from consulting engineers to determine difficulties, if any, with specific assignments, and planning for their introduction of DTV technology according to the schedule set forth by the Commission. As noted above, Sullivan was concerned with inadequate power assignments to many of its new DTV channels and spent a considerable amount of time and money to determine the steps that could be taken to alleviate the difficulties. Many other stations did the same. Stations began their search for tower locations and began efforts to collocate antennas as the Commission advised. A significant reliance was placed on the Commission's promised efforts to resolve cases of significant adjacent channel interference.

MSTV, in a significant effort of its own, has proposed its solution to the adjacent channel problem and the congested area problem as well. The result, unfortunately, is a new DTV allotment table, which, while leaving many stations unaffected, makes significant changes for hundreds of others.[2]

It is difficult, in the short time permitted, to fully assess the new MSTV table of allotments. Its changes on behalf of individual stations across the country have created ripple

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[2] It is possible, of course, that the Commission's attempts to deal with the adjacent channel problem will also result in a completely new table. Hopefully, the Commission will take a more surgical approach. Sullivan reserves the opportunity to comment on any new table that the Commission might adopt. In the meantime, "Sufficient unto the day is the evil thereof." -- Matthew 6:34.

effects for others. Determining the ultimate source of these effects is next to impossible. In addition, it appears that MSTV's techniques for determining service areas might have differed from those used by the Commission in some small degree, producing artifacts that make evaluating the table more difficult. In some cases, for instance, MSTV's table purporting to show the negative effects of the adjacent channel problem, shows *increased* DTV and even NTSC service areas.[3] It is not immediately apparent why this should be the case. MSTV's "Improvements to the DTV Table" (presumably the "fix" for the problems of adjacent channel interference and the congested area problem) does in fact improve the lot of many stations to one degree or another, but at the same time makes things worse for many others.

In its submission, MSTV explains that its improvements were:

> [D]erived from the same neutral principles that have guided other joint industry efforts in the past to inform the Commission's DTV allotment/assignment process. By neutral, we mean that channel assignments are made systematically by a computer program that is blind to station identity -- to who owns a station or whether a station is noncommercial, commercial, a network affiliate or an independent.

If the computer program were blind, one can only presume that, at some stage of computation, it was provided with at least a white cane. Clearly, some groups of stations fare differently than others. For instance, the Commission gave assigned channels 60-69 to 14 stations, seven of which are affiliated with some network. In MSTV's re-working of the table, all of these stations received more favorable assignments outside the channel 60-69 block. MSTV, in its table,

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[3] As an example, MSTV's Exhibit 1B, FCC DTV Table with Corrected Coverage and Interference Figures, shows WUTV in Buffalo gaining more than 2000 square miles of DTV coverage area and 34,000 people.

allotted 38 stations to channels 60-69 (which, given the requirement that the Commission reallocate these channels for public safety use, seems a futile act). Only five of these stations are affiliated with the three major networks. It seems that neutrality served network affiliates quite well.[4] In individual cases, the tilt to the major network affiliates is just as clear. One thing is certain, the issue Sullivan considers most important was not addressed. MSTV did not direct its considerable energy to solving the problem of the UHF power disparity.

The effect of the MSTV table on Sullivan stations. MSTV's treatment of WUTV, Buffalo, is a typical example of the peculiarities associated with the "Improvements" in the allotment table. The Commission allotted WUTV DTV channel 14. According to MSTV's table 1B showing interference effects, there would be little effect on WUTV, save for the artifacts noted above. But for the inadequate 50 kW assigned by the Commission -- an issue not at all addressed by MSTV -- WUTV's DTV channel assignment seemed free of major concern. Comes now MSTV's "improvements" and Sullivan discovers that the DTV assignment has been changed to channel 15. The square mileage of DTV coverage has gone up a bit, the number of people served has gone down a bit, and interference to NTSC operations has increased somewhat -- all in all, a wash. WUTV's original DTV assignment, channel 14, has been given to another market station, WNED, which had been assigned DTV channel 43 by the Commission. WNED had been no more affected by interference (according to MSTV) than WUTV. So why the change? It can only be presumed that somewhere, some station might have benefitted -- that the ripple effect from some distant market reached Buffalo. The result, however, is that now WUTV

[4] It is no coincidence that the overwhelming majority of the MSTV Board of Directors is composed of representatives of the three major television networks.

DTV may have an adjacent channel problem (with WNED DTV) where none existed before. This is not an improvement.

In Rochester, the situation is worse. Sullivan's Fox affiliate WUHF was assigned DTV channel 28 by the Commission. Again, MSTV's projected effects of adjacent channel interference are negligible to non-existent. Still, MSTV changes WUHF's DTV assignment to channel 59, a channel not projected to be in the Commission's "core spectrum" and therefore a channel where WUHF cannot remain. The original DTV channel 28 was then re-assigned to a market competitor, ABC affiliate WOKR, to which the Commission had originally assigned channel 59! Thus, with no apparent reason except to benefit the more powerful ABC affiliate, MSTV simply flip-flopped the DTV assignments. This is of particular concern to Sullivan since it had gone to considerable expense to conduct an analysis of the Commission's DTV assignment to show the Commission that a tenfold power increase would cause no additional interference.

In a similar, although not quite as egregious, situation, in Charleston, West Virginia, the Commission assigned WVAH-TV, a Sullivan Fox affiliate, DTV channel 19. MSTV re-assigned channel 19 to a market competitor, ABC affiliate, WCHS, which had been assigned DTV channel 55 by the Commission, and assigned to WVAH-TV DTV channel 39. The only noticeable effect of this switch was to make a marginal improvement in WCHS's replication of its NTSC signal and to make slightly worse WVAH-TV's replication of its NTSC signal. Whatever plans WVAH had made based on the channel 19 assignment would be for nothing if the MSTV re-assignment is approved.

MSTV's treatment of other stations is less dramatic, yet not without significance. The projected effect of interference to Sullivan's WXLV, Winston-Salem, North Carolina, is very

small, probably within the realm of statistical error. By what we again presume to be the ripple effect from MSTV corrections elsewhere, however, interference to WXLV's NTSC service area increases by 1.9%, and to NTSC population served by 1.3%. Assuming that these figures are statistically meaningful, WXLV will have suffered a slight reduction of NTSC service with no accompanying benefit.

In most cases MSTV changes to the table of allotments do not benefit the Sullivan stations and, in some cases, make their prospects worse. It may be that the adjacent channel interference problem is so severe (even though, in most cases, the MSTV figures do not show that to be the case), that the Commission too will have to resort to wholesale tinkering with the entire allotment table. That would be regrettable. Too much has already been invested in the present table and too much time has passed if the Commission expects stations to meet the strict schedule of digital television roll-out.

Conclusion. Sullivan notes the interesting juxtaposition of the ALTV and MSTV ex parte submittals. ALTV seeks only to improve the lot of the smallest stations at the expense of no other station. MSTV seeks to solve problems endemic to the most congested areas, served by the largest and most powerful stations. Its efforts may lighten the load for a few, but they create a heavier burden for others. In particular, it is hard to avoid the observation that the primary beneficiaries of the MSTV proposals are the three major network affiliates in large markets. In the final analysis, it is up to the Commission to solve these problems and we hope that the Commission will see through the MSTV smokescreen and make its primary focus that of ensuring that all stations have the ability to compete in the digital world with sufficient power to reach their core audiences. For its part, Sullivan is ready and eager to begin the digital transition.

All that is needed is a bit of certainty. Hopefully, the end game is approaching.

Respectfully submitted,

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